

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

GLENN S. MORRISON, Individually,

NO. 3:20-cv-06015-JHC

Plaintiff,

VS.

STATE OF WASHINGTON; DEPARTMENT OF HEALTH and SOCIAL SERVICES (DSHS); DEPARTMENT OF HEALTH (DOH); DAVID HOLT, CEO WESTERN STATE HOSPITAL, KATHERINE RAYMER; DANIEL RUIZ PAREDES; TODD M. TERHAAR, DOH HEALTH CARE INVESTIGATOR III; CITY OF TACOMA and JENNIFER TERHAAR,

PROTECTIVE ORDER REGARDING DISCOVERY OF TODD TERHAAR'S PERFORMANCE EVALUATIONS

Defendants.

1. INTRODUCTION

This matter comes before the Court on Defendant Todd Terhaar's Motion for Protective Order to Preclude Production of Personnel Evaluations. Dkt. # 46. The motion is unopposed.

Plaintiff submitted written discovery requests to DOH seeking, *inter alia*, “a complete copy of Todd Terhaar’s personnel file, including his initial application for employment with the Department of Health.” The production of Mr. Terhaar’s performance evaluations is appropriate, but limitations on the

1 parties' use and dissemination of this material is also appropriate. Discovery of this material involves
2 production of confidential and private information for which special protection is warranted.

3 Accordingly, this Court finds the following Protective Order is appropriate.

4 2. CONFIDENTIAL MATERIAL

5 Confidential material shall include Mr. Terhaar's performance evaluations, produced by the
6 Department of Health in this lawsuit at Bates Nos. 01040001-79.

7 3. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 3.1 A receiving party may use confidential material that is disclosed or produced by another
9 party or by a non-party in connection with this case only for prosecuting, defending, or attempting to
10 settle this litigation. Confidential material may be disclosed only to the categories of persons and under
11 the conditions described in this agreement. Confidential material must be stored and maintained by a
12 receiving party at a location and in a secure manner that ensures that access is limited to the persons
13 authorized under this agreement.

14 3.2 Unless otherwise ordered by the court or permitted in writing by the designating party, a
15 receiving party may disclose any confidential material only to:

16 a) The receiving party's counsel of record in this action, as well as employees of such
17 counsel to whom it is reasonably necessary to disclose the information for this litigation;

18 b) The Officers, Directors, Managers and in-house counsel of the receiving party to whom
19 disclosure is reasonably necessary for this litigation, as well as non-counsel employees of
20 the receiving party to whom disclosure is reasonably necessary for this litigation, unless
21 the parties agree that a particular document or material produced is for Attorney's Eyes
22 Only and is so designated;

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- 1 c) Employees of the receiving party who have a need to know to perform job functions
- 2 related to the litigation or in responding to such things as Public Records Act requests or
- 3 as required by law;
- 4 d) Experts and consultants to whom disclosure is reasonably necessary for this litigation;
- 5 e) The Court, court personnel, and court reporters and their staff subject to the filing
- 6 requirements outlined below;
- 7 f) Professional copy, document management, electronic discovery or imaging service
- 8 providers retained by counsel to assist in the management and duplication of Confidential
- 9 Material, provided that such service provider agreed in writing to use the Confidential
- 10 Material only to perform services for the party that has retained it in this litigation to not
- 11 disclose any Confidential Material to third parties and to immediately return all originals,
- 12 copies, and digital images of any Confidential Material upon rendering of the service;
- 13 g) Witnesses during a deposition in the action to whom disclosure is reasonably necessary.
- 14 h) The author or prior recipient of a document containing the Confidential Material;
- 15 i) A custodian or other person who otherwise possessed or knew the Confidential Material
- 16 prior to this litigation;
- 17 j) Mock trial and jury consultants, including, but not limited to, mock jurors and
- 18 k) Any mediator retained by the parties or appointed by the Court in this action and
- 19 employees of such mediator who are assisting in the conduct of the mediation, provided
- 20 that such mediator has agreed in writing to maintain the confidentiality of confidential
- 21 information received in this action.
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1 3.3 Before filing confidential material or discussing or referencing such material in court
2 filings, the filing party shall confer with the designating party to determine whether the designating party
3 will remove the confidential designation, whether the document can be redacted, or whether a motion to
4 seal or stipulation and proposed order is warranted. During the meet and confer process, the designating
5 party must identify the basis for sealing the specific confidential information at issue, and the filing
6 party shall include this basis in its motion to seal, along with any objection to sealing the information at
7 issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will
8 be applied when a party seeks permission from the court to file material under seal. A party who seeks to
9 maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule
10 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will
11 result in the motion to seal being denied, in accordance with the strong presumption of public access to
12 the Court's files.

14 4. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving party
18 must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its
19 best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons
20 to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that
21 such person or persons agree not to further disseminate any information or documentation.

23 5. INADVERTENT PRODUCTION OF CONFIDENTIAL MATERIAL

24 When a producing party gives notice to receiving parties that certain inadvertently produced
25 material is subject to a claim of privilege or other protection, the obligations of the receiving parties are
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1 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
2 whatever procedure may be established in an e-discovery order or agreement that provides for
3 production without prior privilege review. The parties agree to the entry of a non-waiver order under
4 Fed. R. Evid. 502(d) as set forth herein.

5 6. TERMINATION AND RETURN OF DOCUMENTS

7 Within 60 days after the termination of this action, including all appeals, each receiving party
8 must return all confidential material to the producing party, including all copies, extracts and summaries
9 thereof. Alternatively, the parties may agree upon appropriate methods of destruction. Notwithstanding
10 this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial,
11 deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
12 work product, and consultant and expert work product, even if such materials contain confidential
13 material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
15 designating party agrees otherwise in writing or a court orders otherwise.

16 DATED this 9th day of August, 2022.

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19 Hon. John H. Chun
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